

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

SPARK ENERGY GAS, LP

Plaintiff,

v.

TOXIKON CORPORATION,

Defendant.

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CIVIL ACTION NO. 4:11-cv-1120  
Jury

**DEFENDANT'S NOTICE OF REMOVAL**

Defendant, Toxikon Corporation, files this notice of removal under 28 U.S.C. § 1446(a), and in support would show the following:

**A. Introduction**

1. Plaintiff, Spark Energy Gas, LP, is a limited partnership organized under the laws of the State of Texas, with its principal place of business at 2105 City West Boulevard, Suite 100, Houston, Harris County, Texas 77042. *See* Exhibit 3, ¶ 2.
2. The sole defendant, TOXIKON CORPORATION, is a Massachusetts corporation, with its principal place of business at 15 Wiggins Avenue, Bedford, Massachusetts 01730. *See* Exhibit 3, ¶ 3.
3. There are no other parties.
4. On February 8, 2011, plaintiff filed suit against defendant in a Texas state court, the 113th Judicial District Court of Harris County, Texas, claiming breach of contract damages in excess of \$300,000 plus attorneys' fees. *See* Exhibit 3, ¶¶ 11, 12, 20, and 23.

5. Defendant was served with the suit on March 1, 2011. *See* Exhibit 2. Defendant files this notice of removal on March 28, 2011, within the 30-day time period required by 28 U.S.C. §1446(b). *See Bd. of Regents of Univ. of Tex. Sys. v. Nippon Tel. & Tel. Corp.*, 478 F.3d 274, 278 (5th Cir. 2007).

### **B. Basis for Removal**

6. Removal is proper because, as admitted by the plaintiff,<sup>1</sup> there is complete diversity between the parties. *See* 28 U.S.C. §1332(a); *Johnson v. Columbia Props. Anchorage, L.P.*, 437 F.3d 894, 899-900 (9th Cir. 2006).

7. The amount in controversy exceeds \$75,000, excluding interest and costs, as shown by the Plaintiff's Original Petition. *See* Exhibit 3, ¶¶ 11, 12, 20 and 23; *see also* 28 U.S.C. §1332(a); *Andrews v. E.I. Du Pont De Nemours & Co.*, 447 F.3d 510, 514-15 (7th Cir. 2006).

8. A copy of all state court pleadings and process (there are no state court orders) are attached to this notice as required by 28 U.S.C. §1446(a).

9. Although personal jurisdiction and venue are improper in this district, and not hereby conceded or waived as to Defendant's right to move for dismissal or, in the alternative, transfer to an appropriate venue, removal to this district is proper solely for purposes of notice under 28 U.S.C. §1441(a) because the state court where the suit has been pending is located in this district.

10. Defendant will promptly file a copy of this notice of removal with the clerk of the state court where the suit was pending.

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<sup>1</sup>*See* Exhibit 3, ¶¶ 2 and 3.

**C. Required Documents**

11. Pursuant to 28 U.S.C. § 1446(a) and Local Rule 81, defendant has attached a copy of the following:

- Exhibit 1 an index of matters being filed;
- Exhibit 2 all executed process in the case;
- Exhibit 3 all pleadings asserting causes of action, and all answers to such pleadings (defendant has not yet filed an answer);
- Exhibit 4 the docket sheet; and
- Exhibit 5 a list of all counsel of record, including addresses, telephone numbers and parties represented.

There are no orders by the state court.

**D. Jury Demand**

12. Plaintiff did not demand a jury in the state-court suit.

**E. Conclusion**

13. Because the amount in controversy is in excess of \$75,000 and the parties are citizens of completely different states, diversity of citizenship jurisdiction is present as recognized by 28 U.S.C. § 1332(a). Defendant therefore, removes the civil state court action to the United States District Court for the Southern District of Texas, Houston Division.

Respectfully submitted,

THE DIETRICH LAW FIRM

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ATTORNEYS FOR DEFENDANT  
TOXIKON CORPORATION

## CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing Notice of Removal and all attachments were served as follows upon the following counsel of record on March 28, 2011:

Mr. Glen Shu  
Mr. Joshua C. Thomas  
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ATTORNEYS FOR PLAINTIFF,  
SPARK ENERGY GAS, LP

s/ Fred Dietrich  
Fred Dietrich